

Frequently Asked Questions about the FACA

What is the FACA?

The Federal Advisory Committee Act (FACA) is a Federal law that governs the establishment and operation of advisory committees. It is implemented Government-wide by the General Services Administration (GSA) which has issued regulations and guidance.

Within the Department, the FACA is administered by the Office of the Chief Financial Officer and Assistant Secretary for Administration, Committee Management Officer. Legal advice on FACA matters is provided by the Office of the Assistant General Counsel for Administration, General Law Division.

The purpose of the FACA is to ensure that the public knows about and has access to meetings between Federal agencies and groups that an agency either has established, or manages and controls to such a degree that it effectively has established it.

The FACA requires that groups be chartered and that meetings be announced and open to the public.

When does the FACA apply?

The FACA applies whenever an agency:

- seeks consensus advice
- from a group that includes at least one person who is not a regular Federal employee, and
- obtains input for its own operations or activities.

When does the FACA not apply?

The FACA never applies to meetings solely between Federal employees (either full-time or permanent part-time, but generally not including contractors).

The FACA never applies to groups that Congress has explicitly designated as FACA-exempt.

Certain types of communications with the public likely will not fall under the FACA. These include, in general:

- Meetings where only individual (and not consensus) input is sought, such as workshops, town hall meetings, “listening sessions” and similar venues,
- Meetings with pre-existing groups formed by the private sector, such as environmental organizations or trade associations where the group has already formulated the views it wishes to provide to the Government, and

- Meetings where the Government is either giving its views to the private sector, or is assisting the private sector in developing guidance for itself.
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Under the Unfunded Mandates Reform Act, the FACA does not apply to meetings between Federal officials and

- elected officials of state, local, or tribal governments or their designees;
- where the participants discuss matters of explicitly or inherently intergovernmental administration or responsibility.

Other exceptions may apply. Before applying any exception, you should discuss your particular situation with an attorney at the General Law Division by calling (202) 482-5391.

How long does it take to establish a committee under the FACA?

The time period for establishing a committee may vary depending on whether the committee is called for by statute, Presidential direction, or the Secretary's authority. Other time determinants include agency resources and commitment to establishing the committee. Generally, three months is optimal.

What is the risk of ignoring the FACA?

Obtaining advice in violation of the FACA may result in any combination of the following:

- a lawsuit where the judge orders the agency to disregard the committee's advice,
- a lawsuit where a judge orders the agency to hold no more meetings until the FACA is followed,
- adverse publicity about the work of the committee, and
- damage to the agency's ability to perform its mission.